

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY PROGRAMS
ELLEN GILINSKY, Ph.D., DIRECTOR**

SUBJECT: Guidance Memo No.08-2003
Procedure for Designation of Vessel No Discharge Zones

TO: Regional Directors

FROM: Ellen Gilinsky 

DATE: February 26, 2008

COPIES: Regional Deputy Directors, Regional Water Permit Managers,
Office of Water Quality Programs - Watershed Programs

Summary:

The purpose of this guidance is to provide a revised procedure for handling public requests or a Department of Environmental Quality initiated effort for the designation of vessel No Discharge Zones, and for designating the No Discharge Zones in accordance with federal regulation 40 CFR Part 140 (2004) and state regulation 9 VAC 25-71 (2004). This guidance supersedes Guidance Document 04-2022.

Electronic Copy:

An electronic copy of this guidance in PDF format is available for staff internally on DEQNET and for the general public on DEQ's website at: <http://www.deq.virginia.gov>.

Contact information:

Please contact Chester Bigelow, Office of Watershed Programs, (804) 698-4554 or ccbigelow@deq.virginia.gov, if you have any questions regarding this guidance.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any particular method for the analysis of data, establishment of a wasteload allocation, or establishment of a permit limit. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

PROCEDURE FOR DESIGNATION OF VESSEL NO DISCHARGE ZONES

I. Background

Section 312 of the Clean Water Act and U.S. Environmental Protection Agency (EPA) enabling regulation at 40 CFR Part 140.3(a)(1) entitled “Marine Sanitation Standard”, provide the EPA the authority to designate waters as No Discharge Zones (NDZ). Waters that support navigable interstate commerce by vessels are eligible for this designation. A designated NDZ is a water into which the discharge of sewage (whether treated or untreated) from all vessels is completely prohibited. Upon written application by the states, EPA can prohibit by regulation discharge of treated or untreated sewage from all vessels within the designated NDZ. Section 62.1-44.33 of State Water Control Law provides the State Water Control Board (SWCB) authority to petition the EPA for the designation of NDZs for the Commonwealth.

It is illegal to discharge untreated sewage from vessels or boats in all Virginia waters. In a designated NDZ, it is also illegal to discharge any treated waste from vessels equipped with Marine Sanitation Devices (MSDs) that grind, treat and discharge human sewage. U.S. Coast Guard (USCG) regulations require all vessels to disable the MSD discharge capability while operating in waters designated as a NDZ.

By agreement with EPA, USCG has the authority and responsibility for the regulation for MSDs for vessels. The USCG, Department of Game and Inland Fisheries (DGIF), Marine Resources Commission (VMRC), and local government enforcement agencies patrol and administer EPA designated NDZs. Federal law and regulation prohibit the states from adopting more stringent regulations on the use and type of MSDs for all vessels except houseboats and floating residences.

II. Objectives for Proposing NDZ

1. NDZs can provide pollutant reductions for waters where shellfish or other designated aquatic uses need additional water quality protection, and
2. NDZs can serve as a pollutant remediation measure in waters where a Total Maximum Daily Load (TMDL) has identified vessels as a significant pollutant source to the impaired water.

III. Procedures for Proposing a NDZ

1. Proposals initiated by individuals, organizations, state, or local government.
 - A. All proposals for a NDZ designation should take the following form:
 - 1) Proposals must be submitted in the form of a letter stating interest and support for proposing a designation of a NDZ for the water of concern.

- 2) The letter should provide basic information such as name, address, and other contact information of the person, group, organization, or governing body making the request.
- 3) The letter should also provide the name of the water body proposed for designation.
- 4) A general description of the boundaries and a map of the area should also be included.
- 5) Proposals for NDZ should provide any other information that would assist in defining or delineating the area.

B. Letters proposing a NDZ are to be sent to the Director, Division of Water Quality Programs at the following address:

Director, Division of Water Quality Programs
Virginia Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

C. DEQ will review the request based on the following criteria:

- 1) Severity of the water quality problem;
- 2) Level of community support; and
- 3) Presence of resources of significance (e.g. shellfish waters, endangered species, etc.).

If DEQ decides to proceed with the NDZ designation, additional data will be obtained with the assistance of the interested parties. If DEQ decides not to proceed, it will respond in writing to the persons making the original request. The response will include the reasons for the decision and what options are available to the individual or group if they wish to continue the designation effort (e.g. petition EPA directly). Such a determination will be based on lack of public support, inadequate number of pump out stations, or a NDZ is not needed to protect the designated uses.

2. Applications initiated by DEQ.

A. DEQ may initiate NDZs as a TMDL implementation tool in waters where MSD discharges from vessels are a significant source of the pollutant responsible for the impairment.

B. In the absence of a TMDL identifying a need for a NDZ, DEQ may elect to pursue a NDZ designation for a water body to protect designated uses in accordance with the provisions of section 312 of the Clean Water Act.

IV. Process for Preparing an Application for a NDZ

1. As part of the application development process DEQ will determine whether:
 - A. A NDZ is required for pollutant reductions from vessels to obtain or protect a designated use(s);
 - B. The proposed designation has local support; and
 - C. An adequate number of pump out facilities are available.
2. A draft application will then be prepared with the assistance and input of the interested parties, agencies, and in consultation with EPA. Staff preparing the draft application should:
 - A. Incorporate the essential elements in Appendix A; and
 - B. Prepare the NDZ application consistent with the EPA guidance entitled Protecting Coastal Waters from Vessel and Marina Discharges: A Guide for State and Local Officials. Volume I. Establishing No Discharge Areas under Section 312 of the Clean Water Act. August 1994. EPA 842-B-94-004.

V. Process for Submitting Application to EPA

1. Upon completion of the draft NDZ application, DEQ will solicit public input on the proposed designation through public notice and hold a public meeting in the watershed of the proposed NDZ. Notices of the proposed NDZ designation will be posted in the Virginia Register, local newspaper(s), and other appropriate media to solicit public comment.
2. DEQ will prepare a final application to include coordination and input from EPA, USCG, DGIF, VMRC and interested parties.
3. Staff will provide the finalized proposal for NDZ application and the summary of public comments to the SWCB for informational purposes prior to submitting to the Secretary of Natural Resources (SNR).
4. DEQ will submit the NDZ application package to the SNR for signature and transmittal to EPA.
5. EPA will publish a notice in the Federal Register announcing the intent to establish the NDZ and solicit public comment on the proposal.
6. Upon the conclusion of the public comment period, EPA will publish the final notice in the Federal Register. EPA will establish the new NDZ at the end of the final notice comment

- period.
7. DEQ will propose an amendment to 9 VAC 25-71 adding the new NDZ to the list of state designated NDZs. This will be presented to the SWCB as a final exempt action (i.e. required to conform to federal law).
 8. Publication of the 9 VAC 25-71 amendment will be made in the Virginia Register and the final 30-day notice period will follow, after which the new NDZ is established in state regulation.

Appendix A

Essential Elements of an NDZ Application

1. Name and contact information for the person, persons, local government, or group making the request.
2. Name, location, and description of the water proposed for a NDZ designation to include:
 - A. Exact boundaries of the area to be designated, using latitude and longitude of boundaries, any bordering landmarks or delineating features (e.g., bridges or mean low water elevations) or other means of identifying the area;
 - B. A map of the area to be designated; and
 - C. Reason(s) designation is being sought:
 - 1) Explain why the water body requires greater environmental protection;
 - 2) Identify any unique features or qualities (including high quality waters) or environmental importance (e.g. shellfish waters, endangered species, crab sanctuary) that necessitate stronger resource protection;
 - 3) Include information on contact recreational use (e.g. swimming, water skiing, jet ski); and
 - 4) Identify any specific water quality problems.
3. Indicate whether the water body is an established sanctuary, national or state park, wilderness area, or recreation area.
4. Indicate whether the water body is a public water supply.
5. Provide an assessment of the availability of boat sewage holding tank pump-outs in the area.
6. Provide an assessment of the amount of vessel utilization in the water body and the type of vessel, as well as its use as either a recreational or a commercial vessel.
7. Provide information, if known, on public support or interest for or against the NDZ designation.
8. Provide information, if available, on local enforcement capability such as marine patrols at the state, federal, or local level.